Decision **DRAFT DECISION OF ALJ GOTTSTEIN** **(Mailed 12/6/2001)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Proposed Policies and Programs Governing Energy Efficiency, Low-Income Development and Demonstration.	Rulemaking 98-07-037 (Filed July 23, 1998)

INTERIM OPINION
ADDRESSING PETITIONS FOR MODIFICATION OF DECISION 01-03-073 REGARDING SELF-GENERATION INCENTIVES

1. Introduction and Summary

By Decision (D.) 01-03-073, dated March 27, 2001, the Commission adopted program initiatives for load control and self-generation, pursuant to Pub. Util. Code § 399.15(b).[1] Today's decision addresses Petitions For Modification that have been subsequently filed by Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCal), Kawakaski Motors Corporation, U.S.A (Kawakaski) and RealEnergy Inc. (RealEnergy) regarding several aspects of the self-generation program.

"Self-generation" refers to distributed generation technologies (microturbines, small gas turbines, wind turbines, photovoltaics, fuel cells and internal combustion engines) installed on the customer's side of the utility meter that provide electricity for either a portion or all of that customer's electric load.

[1] All statutory references are to the Public Utilities Code, unless otherwise noted.

Under the program adopted in D.01-03-073, financial incentives are provided to three different categories (or levels) of distribution technologies:

Level 1: The lesser of $4.50/watt or 50% of project costs for photovoltaics, wind turbines and fuel cells operating on renewable fuels;

Level 2: The lesser of $2.50/watt or 40% of project costs for fuel cells operating on non-renewable fuel and utilizing sufficient waste heat recovery, and

Level 3: The lesser of $1.00/watt or 30% of project costs for microturbines, internal combustion engines and small gas turbines utilizing sufficient waste heat recovery and meeting reliability criteria.

The Commission authorized combined annual budgets of $125 million for PG&E, SoCal, Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) over a four-year period.[2] The program was officially launched on June 29, 2001.

By today's decision, we make certain modifications and clarifications to D.01-03-073. Based on Kawakaski's Petition, we change the maximum project size and corporate parent limit for self-generation incentives from 1 megawatt (MW) to 1.5 MWs. However, we do not modify the current cap on the incentives that any single project can receive. This change conforms the project size limit to the scales and sizes of units in the market, while still assuring a broad dispersion of program funds.

[2] PG&E, SoCal, SDG&E and SCE are referred to collectively as "the utilities" throughout this decision.

In addition, we clarify that the utilities should carry over any unused funding from one year to the next during the four-year program period, and may borrow against the annual budget of a subsequent year if program participation is larger than anticipated in the current year. This treatment is consistent with our approach to funding other public purpose programs (e.g., energy efficiency) and reflects our intent to fund the load control and self-generation initiatives at the full four-year authorization level.

We deny the Joint Petition of PG&E and SoCal and RealEnergy's Petition for the reasons discussed herein.

2. Procedural History

On June 24, 2001, PG&E and SoCal jointly filed a Petition for Clarification[3] of D.01-03-073 (Joint Petition). PG&E and SoCal seek Commission authorization to offer self-generation incentives to their gas customers that take electric service from a municipal utility. The Center For Energy Efficiency and Renewable Technologies filed comments in support of the Joint Petition. In addition, the League of California Cities and RealEnergy sent letters of support to the Commissioners, with copies served on the parties to this proceeding.

By Ruling dated August 24, 2001, the assigned Administrative Law Judge (ALJ) directed the utilities to clarify their implementation policies and practices for energy efficiency services to customers who take energy services from a municipality or entity other than an investor-owned utility (IOU). The utilities filed their joint response on September 14, 2001.

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[3] PG&E and SoCal titled their pleading as a Petition for Clarification. We will treat this pleading as a petition for modification.

On August 24, 2001, Kawakaski filed a Petition to Modify D.01-03-073 (Kawakaski's Petition) requesting an increase in the 1 MW project size limit for self-generation incentives to 1.5 MWs. No comments were filed in response to Kawakaski's Petition.

On September 19, 2001, RealEnergy filed a Petition to Modify D.01-03-073 (Real Energy's Petition) with respect to several issues relating to the implementation of self-generation incentives. In addition to supporting PG&E and SoCal's Joint Petition, RealEnergy requests: 1) inclusion of certain types of equipment in the project costs used to determine incentive payments, 2) application of the 1 MW corporate parent limit only in quarters when excess funds are not available, 3) adoption of certain applicant due diligence requirements, and 4) participation by interested parties in the working group established by D.01-03-073.

On October 5, 2001, SCE, PG&E and SDG&E/SoCal filed comments in response to RealEnergy's Petition. RealEnergy and SDG&E/SoCal filed reply comments on October 15, 2001.

3. Issues

The petitions raise the following issues for our consideration:

1. Should customers within the IOU's service territory that take electric service from a municipal utility be eligible for self-generation incentives?

2. Should the 1 MW project size limit be increased to 1.5 MWs?

3. What types of equipment should be included in the project cost used to determine incentive payments?

4. Should the 1 MW corporate parent limit apply only in quarters where excess funds are not available?

5. Should the Commission require applicants to demonstrate that certain milestones are being met in order to reserve funding for their project?

6. Should the working group adopted in D.01-03-073 be expanded to include interested parties?

7. How should the utilities administer any overruns or under spending in the various annual budgets set by the Commission in D.01-03-073?

We address each of these issues in the following sections.

4. Eligibility of Customers Taking Electric Service From Municipal Utilities

SoCal and PG&E request the Commission to clarify that their natural gas customers taking electric service from municipal utilities are eligible to apply for incentives under the self-generation program. In their view, this clarification is consistent with the intent of the Legislature and the Commission. In addition, SoCal and PG&E contend that excluding such customers is inconsistent with the implementation of other public purpose programs, i.e., energy efficiency programs. SoCal and PG&E argue that since a portion of the program costs are charged to gas customers, it follows that gas-only customers should be allowed to participate in the program.

In SCE's view, ratepayers should not be forced to fund self-generation projects within the service territory of a municipally-owned utility. SCE questions whether SoCal and PG&E's interpretation is consistent with the intent of Assembly Bill (AB) 970, which it describes as being adopted "in direct response to the recent energy crisis facing investor-owned utilities and their customers."[4] No matter what the Commission decides on the Joint Petition, SCE

[4] SCE Response to Petition of RealEnergy, October 5, 2001, p. 8.

urges the Commission to clarify that only SCE customers are eligible to participate in SCE's self-generation incentive program.

In considering this issue, we first look to the language of AB 970, which added § 399.15(b). That section requires the Commission to "adopt energy conservation demand-side management and other initiatives in order to reduce demand for electricity and reduce load during peak demand periods" and further specifies that such initiatives should include incentives for distributed generation. There is no further guidance in this language as to the specific implementation details for the program, including the eligibility issue raised by the Joint Petition.

The following observations that SCE makes concerning the context for the passage of AB 970 are persuasive:

> "Considering the circumstances under which AB 970 was adopted and the language in the legislation itself, it is reasonable to conclude that the Legislature did not intend to include systems owned and controlled by municipally-owned utilities. Since cities like Los Angeles were not being impacted by the high energy prices and were actually profiting from the crisis, why would the Legislature be concerned with providing these cities additional benefits through load control or enhanced reliability? SCE believes that the legislative intent was always to benefit only those systems under the control of the Public Utilities Commission."[5]

Moreover, PG&E and SoCal's proposed treatment of municipal utility customers under the self-generation program would, in fact, be *inconsistent* with the eligibility requirements for utility energy efficiency programs offered to low-income and non-low income customers. In response to the assigned ALJ's ruling,

[5] SCE Response to RealEnergy's Petition, October 5, 2001, p. 8.

the utilities acknowledge that they do not provide their customers with energy efficiency incentives or measures designed to reduce electric loads (e.g., for efficient lighting and appliances) unless those customers take electric service from the IOU. We note that PG&E currently offers infiltration-reducing measures (e.g., caulking, weatherstripping) to their natural gas customers that take electric service from a municipality, but only because those measures will also reduce natural gas usage. If the customer takes electric service from a municipal utility and heats their home with propane, PG&E does not offer these measures.[6]

PG&E and SoCal argue that D.01-03-073 must include municipal utility electric customers because it contains language referring to "all the utility service territories" and "any customer of an investor-owned distribution company in California" in describing the program, and does not explicitly exclude these customers in its list of entities that are not eligible for incentives under the program. We disagree. In reviewing the record in this proceeding, including the Energy Division report on recommended programs, comments on that report and on the draft decision, we find that the issue of whether or not municipal electric customers could participate in the program was not raised as a concern or consideration by any party. As discussed above, defining eligibility to include these customers for electric load-reducing programs would be a departure from current practices for other public purpose programs. Therefore, it is unreasonable to conclude that D.01-03-073 allocated program funding to reduce

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[6] September 14, 2001 Response of PG&E, SCE, SoCal and SDG&E to the ALJ's Ruling.

the electric loads of municipal utilities without any explicit discussion of the issue in the decision.

D.01-03-073's language does not support SoCal and PG&E's contention that the Commission would not have allocated program costs to its gas customers if it intended that only those that take electric service from an IOU were eligible for incentives. In fact, the Commission clearly stated that gas customers should pay a portion of the program costs irrespective of whether or not those customers would benefit from electric load reductions: "some of the program costs for self-generation are assigned to gas ratepayers, as well as electric ratepayers, to reflect the public benefits (e.g., environmental) that will accrue to gas ratepayers as well."[7] While PG&E and SoCal may object to this rationale and the resulting cost allocation to their gas customers, there is no basis for interpreting the decision to allow electric customers of municipal utilities to participate in the program just because all IOU-gas customers share in the costs.

We note that the decision authorizes both SoCal and SCE to each separately administer the funds collected from their ratepayers, which SoCal interprets to mean that it can offer incentives to its gas customers served by municipal utilities.[8] However, neither the language of the decision or the context for considering this administrative issue supports this interpretation. The Office of Ratepayer Advocates (ORA) presented a recommendation that SoCal be selected as the program administrator for the funds collected from SoCal and SCE customers, rather than having each separately try to coordinate

[7] D.01-03-073, mimeo. p. 13.

[8] Joint Petition, Appendix B, p. 2. See D.01-03-073.

the application and approval process between them. This section of the decision simply gives SoCal and SCE the option of either "coordinating their marketing and tracking of program incentives carefully," so that each utility might market to eligible customers, or letting one utility (SoCal) do all the outreach and tracking for "generally [the] same service territory and customers."[9] While D.01-03-073 allows both utilities to approach customers, it does not authorize SoCal to market the program to municipal utility customers.

In sum, based on our consideration of the context for the development and implementation of the self-generation program initiatives, the eligibility requirements for other public purpose programs that reduce electric loads, and the language of D.01-03-073, we deny the Joint Motion. In authorizing the self-generation program in D.01-03-073 we intended to reduce the electric loads of IOU electric customers, and the Petition dues not persuade us to modify that intention. We note that many of the municipal utilities (e.g., the Sacramento Municipal Utility District, Los Angeles Department of Water and Power, Palo Alto and Santa Clara) offer incentives for distributed generation technologies to serve their electric customers, and those customers should take advantage of these programs.

5. Increasing the 1 MW Project Size Limit to 1.5 MWs

In D.01-03-073, we adopted a project size limit of 1 MW because this size represents "a fairly large installation for a single customer site and, at the same time, will not use up an unreasonable amount of program funding."[10]

[9] D.01-03-073, mimeo. p. 38.

[10] *Ibid.* p. 28.

We are persuaded by Kawasaki's Petition that the 1 MW limit may inadvertently deter customers from purchasing the more efficient, less polluting gas-fired distributed generation technologies because those units are manufactured in sizes somewhat higher than 1 MW. The record indicates that a limit of 1.5 MWs is consistent with a logical break in the market. This is the upper bound of units typically considered by large commercial and small industrial customers who have traditionally relied upon their local utility for power. Hence, we will modify D.01-03-073 to allow units up to this size limit to be eligible for self-generation incentives.

However, with the limited funding available for self-generation incentives, including renewable technologies (much of which has already been subscribed in the first few months of the program), we are not inclined to change the current cap on the incentives that any single project can receive. Therefore, while we will allow units up to 1.5 MWs to be eligible under the program, any output capacity above the first MW will not be eligible for additional incentives. For example, a Level 3 project that is within the 1.5MW size limit would receive the lesser of $1 million ($1.00/W x 1 MW) or thirty percent (30%) of total project costs. This change will conform the project size limit to the scales and sizes relevant to the market, while still assuring a broad dispersion of program funds.

6. Equipment Included In Project Costs

In D.01-03-073, the Commission determined that Level 2 and 3 technologies (fuel cells utilizing non-renewable fuels, microturbines, small natural gas turbines and internal combustion engines) must utilize waste heat recovery at the customer site in order to be eligible for incentive payments. By D.01-06-035, the Commission adopted the waste heat recovery standards defined for cogeneration in § 218.5 as the waste heat recovery requirement for these technologies. Those standards require that at least 5% of the facility's total annual energy output must be in the form of useful thermal energy, and establish a minimum system efficiency requirement of 42.5%.

RealEnergy requests that we clarify that all waste heat recovery equipment that must be installed in order for an applicant to satisfy these requirements be included in project costs for the purpose of calculating the incentive payment. Although RealEnergy's Petition does not clearly identify such equipment, its reply comments suggest that devices such as absorption chillers would be included, since they create thermal output when connected to the generation device.[11]

As the utility administrators explain, eligible project costs currently include heat recovery equipment directly connected to the generation equipment, and heat recovery piping and controls necessary to interconnect primary heat recovery equipment to existing thermal load at the project site. However, the program administrators have distinguished between this type of equipment and the cost of devises that then use the heat ("thermal load equipment"), such as absorption chillers.[12] We believe that this is a reasonable line to draw. If the utilities are directed to pay for one type of thermal load equipment like chillers, developers are also likely to seek funding for other thermal load equipment, such as boilers and radiators, thermal storage tanks, etc. We deny RealEnergy's request, and affirm the program administrators' decision

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[11] RealEnergy's Reply Comments, p. 3. See also PG&E's Comments, p. 2.

[12] SCE's Comments, Appendix A.

to exclude the cost of thermal load equipment at the project site from eligible project costs.

7. Application of the 1 MW Corporate Parent Limit

In D.01-03-073, we stated that individual customers could apply for incentives for more than one system, "as long as the combined size does not exceed 1 MW."[13] The program administrators have translated that restriction into a limit of 1 MW per corporate parent, per participating utility per calendar year.

RealEnergy asserts that the corporate parent limit "frustrates the expenditure of program funds," and requests that the Commission provide some flexibility in its enforcement.[14] Specifically, RealEnergy proposes that the corporate parent limit be lifted if, at the end of a quarter, there are remaining program funds that have not been committed. The per site (project size) limit would apply at all times.

In establishing limits on the number of projects that a customer could apply for, we intended to use program funds to assist many customers in installing self-generation, rather than allowing a few entities to use most of the project funds. Indeed, in setting this limit, we noted that one system of the maximum size would receive about one-third of the available funding in SDG&E's service area, which is the smallest budgeted program.[15] RealEnergy suggests in its Petition that excess funds will languish unused from quarter to

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[13] D.01-03-073, mimeo. pp. 27-28.

[14] RealEnergy Petition, p. 4.

[15] D.01-03-073, mimeo. p. 28.

quarter, unless customers that are already participating in the program are allowed to apply for incentives for additional sites in that same calendar year. However, there is no evidence that the expenditure of program funds has been unduly hampered by the corporate parent cap, despite RealEnergy's assertions.

During the first four months of the program, PG&E received applications for more than $40 million in incentives, out of a total annual program budget of $60 million (including administration and marketing), and is oversubscribed for Level 1 (renewable) technologies. Similarly, SCE is already oversubscribed in Level 1 and has approximately $20 million out of $32.5 million reserved to date. Over half of the program funding has been reserved in SDG&E's service area. Only SoCal appears to be experiencing a large proportion of unreserved funding during the initial four months of the program, but we expect this situation to improve as SoCal increases its marketing efforts in coordination with SCE.[16]

Our experience with program implementation to date does not warrant relaxation of the corporate parent limit. Since it is imposed on a calendar year basis, a single parent company is already eligible to participate in eligible projects totaling 6 MW over the four-year program period, based on the higher 1.5 MWs project size limit adopted above. RealEnergy's proposal would allow this level of participation to further increase based on the ebb and flow of funding requests versus program budgets, from one quarter to the next. This suggests that the utilities would have to create a quarterly budgeting process, which would add an additional and unnecessary level of complexity to the administration of the program. We also share SCE's concerns that this proposal

[16] PG&E's Comments, p. 4, SDG&E/SoCal comments, p. 4.

could encourage some participants to try to game the system by delaying their projects until the end of a given quarter.

For the above reasons, we will not modify the corporate parent limit, other than to increase the limit to 1.5 MWs per calendar year, consistent with our decision today to grant Kawasaki's Petition.

8. Due Diligence Requirements

RealEnergy proposes that the Commission require applicants to meet additional due diligence requirements. In particular, it argues that applicants for projects which require air permits submit a copy of the authority to construct the proposed project, and that other applicants be required to submit a copy of their building permit. In addition, RealEnergy suggests that additional, unspecified development milestones be set up as conditions to receiving funding.

The premise for this change is the argument that applicants may reserve program funds for up to nine months before making a decision as to whether to proceed with the project.[17] However, the record in this proceeding indicates that this premise is not accurate. Currently, after an applicant receives a letter from the program administrator telling it that the project has conditionally qualified for incentive payments, the applicant has 90 days to meet a variety of requirements. These include: (a) applying for an interconnection with the utility; (b) applying for a building permit and air permit; (c) signing an equipment purchase order or agreement; and (d) providing a detailed project cost breakdown. The project then has an additional nine months beyond that date (for a total of one year from the conditional approval letter) to come on line.

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[17] RealEnergy's Petition, p. 4.

Because the applicant must sign the equipment purchase order, it must make a decision about whether to proceed within 90 days, not nine months.

Moreover, the specific proposals suggested by RealEnergy could create unnecessary obstacles to some projects. As PG&E points out, developers will want to know whether they will be receiving incentive funds <u>before</u> they go through the expense of obtaining air or building permits (which potentially could be quite expensive), because their willingness to pay for the cost of obtaining such permits may be influenced by whether they will qualify for funds under the self-generation incentive program.

We believe that it may be reasonable to revise the current timeline or set up new milestones, based on experience with this program. However, this is one of the issues that program administrators and the Energy Division, in consultation with others, should review during the program evaluation process after some experience has been gained. Right now, just four months into the program, RealEnergy's proposed changes are inappropriate and premature.

9. Working Group Structure

In D.01-03-073, we anticipated that some of the implementation details for the self-generation program would require further development, and directed that the program administrators, working with the Commission's Energy Division, develop them on a consistent, statewide basis.[18] Consistent with our direction in D.01-03-073, the California Energy Commission participated in meetings with program administrators and Energy Division to discuss the

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[18] D.01-03-073, mimeo. p. 37. Ordering Paragraph 16.

program details it has developed to encourage self-generation.[19] In D.01-06-035, we directed Energy Division to select the final program details for statewide implementation, without delay.[20]

RealEnergy requests that meetings of the working group, described above, allow for participation by interested parties in discussions and in the decision-making process on a regular basis. RealEnergy contends that there is currently no procedure for the public or interested parties to communicate with the working group, and without such communication, program implementation will not be successful.

The working group, as currently comprised, fulfills the intent of D.01-03-073 to expeditiously create a statewide, coordinated final program design incorporating all of the features specifically called out in the decision. That goal was attained on June 29, 2001, with the launching of the program. In developing these implementation details, the working group encouraged parties interested in particular topics to express their views to working group members, and many interested parties, including developers, customers, legislators and others have done so.[21]

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[19] *Id.*

[20] D.01-06-035, mimeo. p. 10. Ordering Paragraph 4.

[21] PG&E Comments, p. 6. SDG&E/SoCal Comments, p. 5, SCE Comments, p. 7. SCE met several times with RealEnergy, and contends that none of the concerns contained in RealEnergy's Petition were brought to its attention. Had they been, SCE states that it would have taken their concerns to the working group, as it had after meeting with other interested parties, such as the South Coast Air Quality Management District, State Assemblymen, manufacturers, etc.

The program administrators now meet on an as-needed basis to review program compliance, coordination and consistency issues, as they do with other statewide programs. When policy issues need to be resolved, they are resolved by the Commission, not the working group. Indeed, the petitions to modify discussed in today's decision demonstrate that interested parties have been willing to present these policy issues to the Commission. We believe that the working group process is functioning as intended and should continue as currently structured.

10. Treatment of Overruns and Under Spending in Annual Budgets

In addressing RealEnergy's proposal for modifying the corporate parent limit, PG&E notes that the treatment of overruns and under spending in annual budgets requires further clarification. SDG&E/SoCal's comments also touch on this issue.[22]

In D.01-03-073, we authorized funding for the self-generation program over a four-year period, and established annual program budgets for this purpose. We specifically afforded program administrators the flexibility to shift funds across categories within the overall budgeted amounts, with certain exceptions. However, we did not specifically address the issue of whether or not the utilities could carry over program funding from one year to the next during the four-year period, or incur overruns in the annual budget for one year, to be made up in the next.[23]

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[22] PG&E Comments, p. 4. SDG&E Comments, p. 3.

[23] D.01-03-073, mimeo. pp. 20-21.

We clarify today that the program should be administered and funded with the amounts we authorized in D.01-03-073 for the four-year period. Utilities should carry over any unused funding from one year to the next, and may borrow against the annual budget of a subsequent year if program participation is larger than anticipated in the current year. However, funding for these programs should not exceed the amounts authorized in D.01-03-073 over the four-year period. The restrictions we established in D.01-03-073 will still apply. For example, the utilities may not shift any of the carryover funds between the load control and self-generation programs (or vice versa) that they administer without first obtaining Commission authorization. Utilities must still seek approval through advice letters prior to shifting additional funds into either of the non-renewable categories under the self-generation program.[24] Energy Division may request, and the utilities should promptly provide, periodic reports on expenditure levels, reservations, carryovers or overruns and other program status information.

This treatment of multi-year program funding is consistent with our approach to other public purpose programs (e.g., energy efficiency), and best reflects our intent to fund the load control and self-generation initiatives adopted in D.01-03-073 at the full four-year authorized levels. At the same time, it provides program administrators with the flexibility needed to respond to variations in program participation, from one year to the next. Within 30 days, the utilities shall revise memorandum account filings for these programs to reflect the four-year program budget limit authorized in D.01-03-073, as clarified

[24] *Id.*

in today's decision. Specifically, the debit entry in the memorandum accounts for self-generation and load control programs, which reflect incremental program costs, should specify that these costs are not to exceed the authorized four-year funding levels for the programs.[25]

11. Comments on Draft Decision

The draft decision of Commissioner Lynch in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by _____________.

Findings of Facts

1. Nothing in the language of AB 970 specifically addresses the issue raised in the Joint Petition, but the circumstances under which AB 970 was adopted suggest that the Legislature intended the statute to benefit IOU electric customers, and not municipal electric customers.

2. Defining eligibility to include municipal utility electric customers would be a departure from current practices for other public purpose programs funded by IOU ratepayers, i.e., energy efficiency programs.

3. The issue of whether or not municipal electric customers could receive incentives under the self-generation program was not raised as a concern or consideration by any party to the proceeding, and was not discussed in D.01-03-073.

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[25] Revisions are to be made to the following Advice Letters (AL): For SCE—AL 1583-E, filed October 15, 2001; For SoCal—AL 3061 filed September 12, 2001; For SDG&E—AL 1363-E-A / 1274-G-A filed on September 12, 2001 and supplemented on October 19, 2001; For PG&E—AL 2140-E-A / 2329-G-A filed on September 20, 2001.

4. In D.01-03-073 the Commission explicitly stated the rationale for having natural gas customers share in a portion of program costs, irrespective of whether those customers would benefit from electric load reductions.

5. In D.01-03-073, the Commission acknowledged that SoCal and SCE have generally the same service territory, and addressed the issue of how best to ensure that customers do not receive incentives for the same self-generation equipment from both utilities. The language of the decision that allows both utilities to approach customers, and coordinate marketing and tracking of incentives between them, was not intended to authorize SoCal to market the program to municipal utility customers.

6. The self-generation program authorized under D.01-03-073 was intended to reduce the electric loads of IOU electric customers.

7. The 1 MW limit project size adopted in D.01-03-073 may deter customers from purchasing the more efficient, less polluting gas-fired distributed generation technologies because those units are manufactured in sizes somewhat higher than 1 MW. A limit of 1.5 MWs is consistent with a logical break in the market.

8. Retaining the current 1 MW cap on the incentives that any single project can receive, while allowing project sizes of up to 1.5 MWs to be eligible, will conform the project size limit to the scales and sizes relevant to the market and continue to ensure a broad dispersion of program funds.

9. Eligible project costs currently include heat recovery equipment directly connected to the generation equipment and controls necessary to interconnect primary heat recovery equipment to existing thermal load at the project site.

10. Including the cost of devices that then use the heat (thermal load equipment) in eligible project costs makes it difficult, if not impossible, to draw

the line on those costs, because a wide range of equipment fall under that category, such as absorption chillers, boilers and radiators, thermal storage tanks, etc.

11. There is no evidence that the expenditure of program funds has been unduly hampered because of the corporate parent limit, as RealEnergy asserts in its Petition.

12. A single parent company is eligible to participate in eligible projects totalling 6 MWs over the four-year program period, based on the 1.5 MWs higher project size limit adopted in today's decision.

13. RealEnergy's proposal for increased corporate parent eligibility requires a quarterly budgeting process that would add an additional and unnecessary level of complexity to the administration of the program. It could also encourage some participants to game the system by delaying their projects until the end of a given quarter.

14. Under current due diligence requirements, the applicant must make a decision about whether to proceed with the project within 90 days, not nine months as RealEnergy contends. The additional due diligence requirements proposed by RealEnergy could create unnecessary obstacles to some projects.

15. The working group process is functioning as intended and should continue as currently structured.

16. The load control and self-generation programs adopted in D.01-03-073 should be administered and funded with the amounts authorized in that decision for the four-year period. Utilities should have the flexibility to address annual budget overruns and underspending from one year to the next, as discussed in this decision. This treatment is consistent with our approach to other public purpose programs, provides administrators with the flexibility

needed to respond to variations in program participation, and ensures that the program will be funded at the full four-year authorization.

Conclusions of Law

1. The Joint Petition should be denied.

2. Kawasaki's request to increase the eligible project size to 1.5 MWs is reasonable and should be approved. However, any output capacity above the first MW should not be eligible for additional incentives.

3. RealEnergy's Petition should be denied.

4. Because the treatment of carryovers and overruns of annual budgets was not specifically addressed in D.01-03-073, but was raised in parties' comments, the issue should be clarified in today's decision as discussed herein. As described in this decision, the utilities should modify their memorandum account filings for these programs to reflect the four-year program funding limit authorized by D.01-03-073, as clarified in today's decision.

5. In order to facilitate the continued implementation of these programs, this order should be effective today.

INTERIM ORDER

IT IS ORDERED that:

1. The June 24, 2001 Petition for Clarification of Decision (D.) 01-03-073 jointly filed by Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCal) is denied.

2. As described in this decision, the August 24, 2001 Petition to Modify D.01-03-073 filed by Kawakaski Motors Corporation, U.S.A is approved in part.

3. The September 19, 2001 Petition to Modify D.01-03-073 filed by RealEnergy Inc. is denied.

4. As discussed in this decision, the load control and distributed generation programs adopted in D.01-03-073 shall be administered and funded with the amounts authorized in that decision for the full four-year period. PG&E, SoCal, San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company, collectively referred to as "the utilities," shall carryover unused funding from one year to the next, and may borrow against the annual budget of a subsequent year if program participation is larger than anticipated in the current year. However, the funding flexibility restrictions adopted in D.01-03-073 shall continue to apply.

5. Energy Division may request, and the utilities shall promptly provide, periodic reports on program expenditure levels, reservations, carryovers, overruns and other program status information for the load control and self-generation programs adopted in D.01-03-073.

6. As described in this decision, within 30 days from the effective date of this decision, the utilities shall modify their memorandum account filings for their self-generation and load control programs to reflect the four-year program

funding limit authorized by D.01-03-073. The utilities shall file revised Advice Letters for this purpose, and serve copies on all appearances and the state service list in this proceeding.

7. D.01-03-073 shall be modified as follows:

   a. The maximum system sizes that appear in the tables on pages 4, 29, Ordering Paragraph 5 and Attachment 1, page 26, are changed from 1 megawatt (MW) to 1.5 MWs for Level 1, Level 2 and Level 3 technologies. Under the incentives offered column, the following language is added to the description of the per Watt incentive for Level 1, Level 2 and Level 3 technologies: "applied to a maximum of 1 MW of output capacity."

   b. The first paragraph on page 28 shall be replaced as follows:

      "In our judgment, a 1 MW size limit will effectively address the concerns raised by NRDC. This size represents a fairly large installation for a single customer site and, at the same time, will not use up an unreasonable amount of program funding. We note that one system of this size would only receive about one-third of the available funding in SDG&E's service territory, which is the smallest budgeted program. However, we recognize that some of the more efficient, less-polluting gas-fired units may be manufactured in sizes somewhat higher than 1 MW. The record indicates that 1.5 MWs is consistent with a logical break in the market for certain technologies. Therefore, we will allow units up to 1.5 MWs to be eligible under the program, but limit incentives to a maximum of 1 MW in output capacity. Individual customers may apply for incentives for more than one system, as long as the combined size does not exceed 1.5 MWs."

c. Finding of Fact 19 is replaced with the following:

> "Limiting incentives to the first MW of output capacity, with a maximum project size of 1.5 MWs, represents a large installation for a single customer, reflects a logical size break in the market, and will not use up an unreasonable amount of program funding."

This order is effective today.

Dated ____________________________, at San Francisco, California.